

BRCV2004-00776

Flanders v Levy Home Entertainment, Inc. et al

File Date	07/13/2004	Status	Disposed: transfered to other court (dtrans)
Status Date	10/18/2004	Session	A - CtRm 1 - (Fall River)
Origin	1	Case Type	B22 - Employment Discrimination
Lead Case		Track	F

Service	10/11/2004	Answer	12/10/2004	Rule12/19/20	12/10/2004
Rule 15	12/10/2004	Discovery	05/09/2005	Rule 56	06/08/2005
Final PTC	07/08/2005	Disposition	09/06/2005	Jury Trial	Yes

PARTIES

Plaintiff

Janice Flanders
New Bedford, MA 02740
Active 07/13/2004

Private Counsel 557097

Goncalo M Rego
Rego Law Offices(G M)
411 Columbia Street
Fall River, MA 02721
Phone: 508-678-3400
Fax: 508-678-3535
Active 07/13/2004 Notify

Defendant

Levy Home Entertainment, Inc.
c/o Prentice Hall Corp. System
84 State Street
Boston, MA 02108
Served: 09/22/2004
Served (answr pending) 09/27/2004

Private Counsel 658884

Christopher J Powell
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210
Phone: 617-832-1000
Fax:
Active 10/18/2004 Notify

Defendant

Chas. Levy Circulating Co.
c/o US Corp. Co.
84 State Street
Boston, MA 02108
Served: 09/21/2004
Served (answr pending) 09/27/2004

Other interested party

FILE COPY
Active 07/13/2004 Notify

ENTRIES

Date	Paper	Text
07/13/2004	1.0	Complaint & civil action cover sheet filed
07/13/2004		Origin 1, Type B22, Track F.

BRCV2004-00776

Flanders v Levy Home Entertainment, Inc. et al

Date	Paper	Text
		view of alleged medical billings and lost wages in excess of \$25,000.00. Pfl
07/20/2004	2.0	Plaintiff Janice Flanders's MOTION for appointment of special process server
07/21/2004		MOTION (P#2) Motion is allowed. (Valerie A. Brodeur, Asst. Clerk Magistrate) Notices mailed July 21, 2004
09/27/2004	3.0	SERVICE RETURNED (summons): Levy Home Entertainment, Inc., service made on September 22, 2004 (agent in charge service: Bernardo Montanez, Process Specialist)
09/27/2004	4.0	SERVICE RETURNED (summons): Chas. Levy Circulating Co., service made on September 21, 2004 (agent in charge service: Bernardo Montanez, Process Specialist)
10/15/2004	5.0	Copy of Petition for Removal to the United States District Court filed by Levy Home Entertainment, Inc., and Chas. Levy Circulating Co.
10/18/2004		REMOVED to US Bankruptcy Court

EVENTS

Date	Session	Event	Result
07/13/2004	CtRm Main - (Taunton)	Status: by clerk Initial One-trial Review	Event held as scheduled

A True Copy By Photostatic Process

Attest:



Asst. Clerk of Courts

**Commonwealth of Massachusetts
County of Bristol
The Superior Court**

CIVIL DOCKET#: **BRCV2004-00776-A**

RE: Flanders v Levy Home Entertainment, Inc. et al

TO: FILE COPY

FILED
2004 OCT 20 A 11: 12
U.S. DISTRICT COURT
DISTRICT OF MASS

NOTICE OF DOCKET ENTRY

You are hereby notified that on **10/18/2004** the following entry was made on the above referenced docket:

REMOVED to US Bankruptcy Court

Dated at Taunton, Massachusetts this 18th day of October, 2004.

Marc J. Santos,
Clerk of the Courts

BY: Valerie A. Brodeur
Assistant Clerk

Telephone: (508) 823-6588

#1.

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss

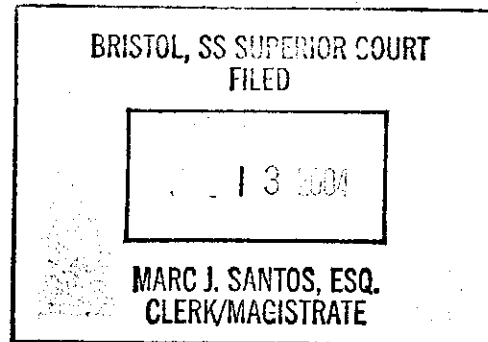
SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.: ~~BRCV2003-00700-~~

AD4-0776

Janice Flanders
Plaintiff

v.

Levy Home Entertainment, Inc.
Chas. Levy Circulating Co.
Defendants



COMPLAINT (JURY TRIAL CLAIM)

I. INTRODUCTION

1. This is an action pursuant to Massachusetts General Laws, Chapter 151B, Section 4, paragraphs 1B & 16. This is an action for damages and other relief arising out of employment of plaintiff, Janice Flanders. The particular claims against the Defendants include, Wrongful Termination, Age Discrimination, and Discrimination on the basis of Disability and failure to accommodate.

II. PARTIES

2. Plaintiff, Janice Flanders, is a resident of New Bedford, Massachusetts.

3. Defendant, Levy Home Entertainment, Inc., is a business entity doing business in the Commonwealth of Massachusetts and organized under the laws of the State of Illinois.
4. Defendant, Chas. Levy Circulating Co. is a corporation doing business in the Commonwealth of Massachusetts and organized under the Laws of the State of Delaware.
5. The Defendants are "Employers" within the definition of the term in Mass. General Laws in Chapter 151B.

III. FACTS

6. At the time of Plaintiff's discharge she was 61 years of age and married. She had been employed with the defendant for approximately six years as a field representative. Plaintiff's duties included maintaining book displays in customer stores, and maintaining regular visits to assigned stores once or twice per week. Specific physical requirements included driving to the assigned stores location, lifting and carrying books. Prior to Plaintiff's discharge her performance had always been satisfactory to the Defendants.
7. On or about April 13, 2001, Plaintiff was involved in a serious motor vehicle accident. As a result of this accident, she suffered multiple injuries to her hip and lower back. The Defendants were notified the next day with regard to Plaintiff's involvement in this particular motor vehicle

accident. The Defendant was further advised that Plaintiff was unable to work due to injuries sustained.

8. During the period that the Plaintiff was absent from work due to her injuries, the Defendants were periodically supplied with medical evidence supporting her disability. On or about June 28, 2001, Plaintiff's treating physician provided to the Plaintiff a return to work document which was subsequently submitted to the Defendant. This particular document allowed the Plaintiff to return to work on or about July 9, 2001 and be assigned to one store for a week and thereafter resume her work without any limitations.
9. Prior to July 9, 2001, the Plaintiff was contacted by her supervisor and advised not to return to work until she was fully recovered and capable of resuming her duties without limitations. She was advised that Defendants would not allow her to return to light duty work. She was further advised that once she was fully recovered she had to reapply.
10. On or about July 11, 2001, the Plaintiff's treating physician forwarded directly to the Defendant a medical note clearing the Plaintiff to return to full work without restrictions. There was no reply or response by the Defendant and its Representatives as to the request by Plaintiff and her treating physician to return to work after July 11, 2001 without limitations.
11. On or about September 4, 2001, a second letter was forwarded to the Defendants, once again, informing them that Plaintiff was ready and capable of returning to work without physical restrictions. In the meantime, Plaintiff reapplied for her position as she was asked to do so

by the Defendants representative. On or about December 4, 2001, the Plaintiff received an unemployment brochure from the Defendant and no further correspondence thereafter.

12. While awaiting for a response by the Defendants, Plaintiff learned that her position was being advertised in a local newspaper, the New Bedford Standard Times. It appears that the position was advertised on or about July 13, 2001 through July 21, 2001. On or about July 25, 2001, Plaintiff further learned that the Defendant was interviewing candidates for her position. Plaintiff was never extended the opportunity to be interviewed for the position in question. Based on reasonable belief and credible information the Plaintiff learned, subsequently, that she had been replaced by a younger person.
13. On 12/26/2001, the Plaintiff filed a timely charge with the Massachusetts Commission Against Discrimination and the Equal Employment Opportunity Commission against the Defendants and its representatives alleging discrimination due to Age, Disability and Failure to Accommodate Plaintiff. All jurisdiction for prerequisites for this action have been satisfied.

COUNT I

CLAIM UNDER MASSACHUSETTS GENERAL LAWS CHAPTER 151B; SECTION 4 (1B) (ALL DEFENDANTS)

14. Plaintiff incorporates the allegations made in paragraphs 1 through 13 as if fully set forth the herein.

15. The Defendants and their representatives discriminated against the Plaintiff and her employment on the basis of her age in violation of Mass General Laws Chapter 151B Section 4 (1B).
16. The discriminatory actions of Defendant have proximately caused Plaintiff to suffer damages.

COUNT II

**CLAIM UNDER MASSACHUSETTS MASS. GENERAL LAWS CHAPTER 151B,
SECTION (4) (16)**

17. Plaintiff incorporates the allegations made in paragraphs 1 through 16 as if fully set forth herein.
18. The Defendants, and their representatives, discriminated against the Plaintiff and her employment on the basis of her disability and failure to accommodate her restrictions pursuant to Mass General Laws Chapter 151B Section 4 (16) discriminatory actions of Defendants have approximately caused Plaintiff to suffer damages
19. The discriminatory actions by Defendants and their representatives have caused Plaintiff to suffer damages.

COUNT III

WRONGFUL TERMINATION

20. Plaintiff incorporates the allegations made in paragraph 1 through 19 as it fully sets forth hearing.
21. The Defendants and their representatives improperly, illegally and wrongfully terminated Plaintiff's employment.
22. The actions of the Defendant have proximately caused the Plaintiff to suffer damages.

COUNT IV

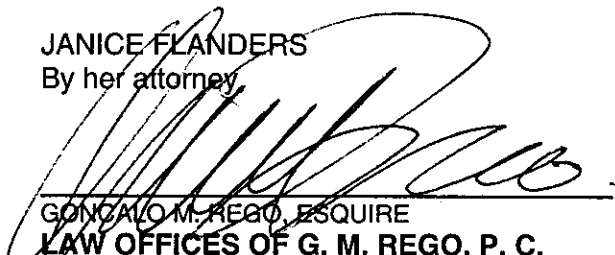
**INTENTIONAL/NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(ALL DEFENDANTS)**

23. Plaintiff incorporates the allegations made in paragraphs, through 22 as if fully set forth herein.
24. By engaging in the foregoing conduct, Defendants and their representatives have intentionally or negligently inflicted emotional distress upon Plaintiff.
25. As a result of their conduct and actions Plaintiff did suffer emotional distress.
26. WHEREFORE Plaintiff request this Court to award her the following relief:

1. Enter Judgment in her favor against the Defendants in amount warranted by the evidence at Trial.
2. Award compensation damages for her financial and emotional damages caused by the discriminatory acts referred in this complaint.
3. Award punitive damages under all Counts and Award Attorney's Fees, including Expert Fees and costs of this action under all Counts.
4. Award such other and further relief has this Court deems just and proper. [THE PLAINTIFF DEMANDS A TRIAL BY A JURY AS TO ALL COUNTS OF THE COMPLAINT]

Respectfully submitted,

JANICE FLANDERS
By her attorney



GONCALO M. REGO, ESQUIRE
LAW OFFICES OF G. M. REGO, P. C.
411 Columbia Street
Fall River, MA 02721
(508) 678-3400
(BBO #557097)

DATED: 7-13-04

**CIVIL ACTION
COVER SHEET**Trial Court of Massachusetts
Superior Court Department
County: _____

204-0776

PLAINTIFF(S)

JANICE FLANDERS

DEFENDANT(S)

LEVY HOME ENTERTAINMENT, INC.,
AND CHAS. LEVY CIRCULATING COMPANYATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE
Goncalo M. Rego, Esquire (508) 678-3400
Law Offices of G. M. Rego, P. C.
411 Columbia St., Fall River, MA 02721
Board of Bar Overseers number: _____

ATTORNEY (if known)

BRISTOL, SS SUPERIOR COURT
FILED**Origin code and track designation**

Place an x in one box only:

- ☒ 1. F01 Original Complaint
- ☐ 2. F02 Removal to Sup.Ct. C.231,s.104
(Before trial) (F)
- ☐ 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)

- ☐ 4. F04 District Court Appeal c.231,s.97 & 104 (After trial) (X)
- ☐ 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.C.P.60) (X)
- ☐ 6. E10 Summary Process

JUL 13 2004
MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE**TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)**

CODE NO.	TYPE OF ACTION (specify)	TRACK	IS THIS A JURY CASE?
B22	EMPLOYMENT DISCRIMINATION	(F)	(X) Yes () No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

A. Documented medical expenses to date:

- | | |
|--|--------------------|
| 1. Total hospital expenses | \$ 445.00 |
| 2. Total Doctor expenses | \$ 3820.00 |
| 3. Total chiropractic expenses | \$3,707.50 |
| 4. Total physical therapy expenses | \$1,605.00 |
| 5. Total other expenses (describe) | \$1,650.00 |
| Subtotal | \$11,227.50 |

B. Documented lost wages and compensation to date

\$22,831.90

C. Documented property damages to date

\$

D. Reasonably anticipated future medical and hospital expenses

\$

E. Reasonably anticipated lost wages

\$ 20,000.00

F. Other documented items of damages (describe)

\$

G. Brief description of plaintiff's injury, including nature and extent of injury (describe)

Emotional and Psychological injuries, including depression.

\$

TOTAL \$54,059.40**CONTRACT CLAIMS**

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL \$

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record

DATE: 7-13-04

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

JUL 20 2004

SUPERIOR COURT
CIVIL ACTION

No.: BRCV2004-00776-A

JANICE FLANDERS

Plaintiff

MAFCO J. SANTOS, ESQ.
CLERK/MAGISTRATE

v.

LEVY HOME ENTERTAINMENT, INC.,
AND

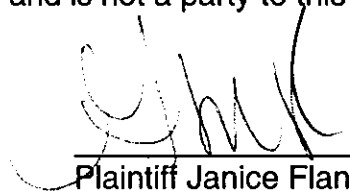
CHAS. LEVY CIRCULATING COMPANY

Defendants

MOTION FOR APPOINTMENT OF SPECIAL PROCESS SERVER

Pursuant to Massachusetts Rule of Civil Procedure 4(c), Plaintiff, Janice Flanders, respectfully moves that QUICKSERV, INC. be specially appointed for the purpose of serving all process and other papers in the above-captioned case.

Plaintiff further certifies that to the best of its knowledge and belief the person appointed process server is experienced in the service of process, is 18 years of age or over, and is not a party to this action.


Plaintiff Janice Flanders,
By her attorney,
Goncalo M. Rego, Esquire
Law Offices of G. M. Rego
411 Columbia Street
Fall River, MA 02721

Dated: 7/19/04

LAW OFFICES OF
G.M. REGO, P.C.
411 Columbia St
Fall River, MA 02721
telephone (508) 678-3400
Fax (508) 678-3535

A True Copy By Photostatic Process
Attest:


Asst. Clerk of Courts

10/20/04 motion in chambers
Goncalo M. Rego
Asst. Clerk of Magistrate

LAW OFFICES OF



Gonçalo M. Rego
Attorney

Juan Vazquez Navarro*
Attorney

Christopher M. Abreu
Attorney

*Also admitted in RI

411 Columbia St., Fall River, MA 02721
Tel. (508) 678-3400
Fax (508) 678-3535

September 24, 2004

ATTENTION: CIVIL CLERKS OFFICE
Taunton Superior Court
9 Court Street
Taunton, MA 02780

RE: Janice Flanders v. Levy Home Entertainment, Inc., et al

CIVIL ACTION NO.: BRCV2004-00776-A

Dear Sir/Madam:

Enclosed please find the summons that was served on the above-mentioned case.

If you have any questions, please do not hesitate to call my office. Thank you for your anticipated cooperation.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Melissa Mare".

Melissa Mare, Paralegal
Goncalo M. Rego, Esquire

MM
Enclosures

CERTIFIED MAIL #: 7003 1010 0004 6336 8624

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DEPT. OF THE TRIAL COURT

CIVIL ACTION

[SEAL]

No. BRCV2004-00776-A

JANICE FLANDERS, Plaintiff (s)

v.

LEVY HOME ENTERTAINMENT, INC.,
CHAS. LEVY CIRCULATING CO.AND BRISTOL, SS SUPERIOR COURT
, Defendant(s) FILED

(TO PLAINTIFF'S ATTORNEY :

PLEASE INDICATE TYPE OF ACTION INVOLVED : SEP 27 2004

TORT — MOTOR VEHICLE TORT — CONTRACT

EQUITABLE RELIEF — OTHER.)

MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE

SUMMONS

TO THE ABOVE-NAMED DEFENDANT: LEVY HOME ENTERTAINMENT, INC.,You are hereby summoned and required to serve upon GONCALO M. REGO, ESQUIRELAW OFFICES OF G. M. REGO, P.C.plaintiff's attorney, whose address is 411 Columbia St., Fall River, MA 02721

an answer to the complaint which is herewith served upon you, within (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this Court at TAUNTON either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Hon. Suzanne V. Del Vecchio, Adm. Justice of the Superior Court Dept. of the Trial Court, at Taunton, the 15th day of September, in the year of our Lord two thousand and Four.

Marc J. Santos, Esq.
Magistrate

NOTES.

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. If the Commonwealth or an officer of agency thereof is a defendant, the time to be inserted is 60 days.

NOTICE TO DEFENDANT — You need not appear personally in Court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's Office.

SEPTEMBER 22, 2004

QUICKSERV
ALLSTATE PROCESS SERVERS

RETURN OF SERVICE

I this day summoned the within named LEVY HOME ENTERTAINMENT INC.
C/O PRENTICE HALL CORP SYSTEM

to appear as within directed by delivering to BERNARDO MONTANEZ, PROCESS
SPECIALIST, 12:00 PM

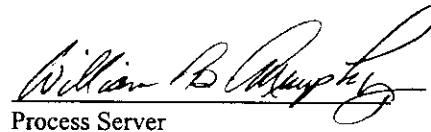
X *in hand*

No. 84 STATE ST.
in the BOSTON *District of said* SUFFOLK *County an attested*
copy of the SUMMONS, COMPLAINT, STATEMENT OF DAMAGES, AND CLERK'S
NOTICE APPROVING MOTION FOR SPECIAL PROCESS SERVER

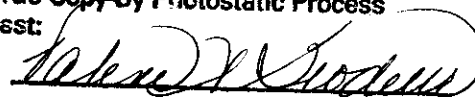
Service and travel 28

Paid Witness

it being necessary I actually used a
motor vehicle in the distance of
10 miles in the service of
this process


Process Server

A True Copy By Photostatic Process
Attest:


Asst. Clerk of Courts

Commonwealth of Massachusetts

**County of Bristol
The Superior Court**

Civil Docket **BRCV2004-00776**

RE: Flanders v Levy Home Entertainment, Inc. et al

TO: FILE COPY

CLERK'S NOTICE

This is to notify you that in the above referenced case the Court's action on **07/21/2004**:

RE: Plaintiff Janice Flanders's MOTION for appointment of special process server

is as follows:

**MOTION (P#2) Motion is allowed. (Valerie A. Brodeur, Asst. Clerk Magistrate)
Notices mailed July 21, 2004**

Dated at Taunton, Massachusetts this 21st day of July, 2004.

Marc J. Santos,
Clerk of the Courts

BY:

Valerie A. Brodeur
Assistant Clerk

Telephone: (508) 823-6588

Copies mailed 07/21/2004

A True Copy By Photostatic Process
Attest:



COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DEPT. OF THE TRIAL COURT

CIVIL ACTION

[SEAL]

No. BRCV2004-00776-A

JANICE FLANDERS, Plaintiff (s)

v.

LEVY HOME ENTERTAINMENT, INC., AND
CHAS. LEVY CIRCULATING CO., Defendant(s)

(TO PLAINTIFF'S ATTORNEY:

PLEASE INDICATE TYPE OF ACTION INVOLVED: SEP 27 2004
TORT — MOTOR VEHICLE TORT — CONTRACT —
EQUITABLE RELIEF — OTHER.)MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE

SUMMONS

TO THE ABOVE-NAMED DEFENDANT: CHAS. LEVY CIRCULATING COMPANY

You are hereby summoned and required to serve upon Goncalo M. Rego, Esquire,
Law Offices of G. M. Rego, P. C.,
plaintiff's attorney, whose address is 411 Columbia St., Fall River, MA 02721an answer to the complaint which is herewith served upon you, within (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this Court at TAUNTON either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Hon. Suzanne V. Del Vecchio, Adm. Justice of the Superior Court Dept. of the Trial Court, at Taunton, the 15th day of September, in the year of our Lord two thousand and FOUR.
Magistrate

NOTES.

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. If the Commonwealth or an officer of agency thereof is a defendant, the time to be inserted is 60 days.

NOTICE TO DEFENDANT — You need not appear personally in Court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's Office.

SEPTEMBER 21, 2004

QUICKSERV
ALLSTATE PROCESS SERVERS

RETURN OF SERVICE

I this day summoned the within named CHAS. LEVY CIRCULATING COMPANY
C/O US CORP. CO.

to appear as within directed by delivering to BERNARDO MONTANEZ, PROCESS
SPECIALIST, 10:00 AM

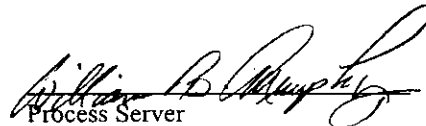
X *in hand*

No. 84 STATE ST.
in the BOSTON *District of said* SUFFOLK *County an attested*
copy of the SUMMONS & COMPLAINT, STATEMENT OF DAMAGES, CLERK'S
NOTICE APPROVING 4C MOTION

Service and travel 28


Paid Witness

it being necessary I actually used a
motor vehicle in the distance of
10 miles in the service of
this process


Process Server

A True Copy By Photostatic Process

Attest:


Asst. Clerk of Courts

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT

JANICE FLANDERS,

Plaintiff,

v.

LEVY HOME ENTERTAINMENT, INC. and
CHAS. LEVY CIRCULATING CO.,

Defendants.

OCT 15 2004

CIVIL ACTION
NO. 04-00776-A**NOTICE OF FILING OF NOTICE OF REMOVAL****TO THE CLERK OF BRISTOL SUPERIOR COURT:**

Please take notice that on October 12, 2004, Defendants filed a Notice of Removal in the above-captioned case with the United States District Court for the District of Massachusetts. A certified copy of Defendants' Notice of Removal is filed herewith.

LEVY HOME ENTERTAINMENT, LLC,
and CHAS. LEVY CIRCULATING CO.,
LLC,

By their attorneys,

Christopher J. Powell

Dean Richlin (BBO #419200)
Michael L. Rosen (BBO #559954)
Christopher J. Powell (BBO #658884)
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1000

A True Copy By Photostatic Process

Attest:

[Signature]
Asst. Clerk of Courts

Dated: October 13, 2004

AFFIDAVIT OF SERVICE

I, *Andre Hester Carter*, depose and state that on this day a true copy of the above document was served upon the attorney of record for each party by mail ~~by hand~~ signed under the pains and penalties of perjury.

FHBOSTON/1117539.1

[Signature] 10/13/04

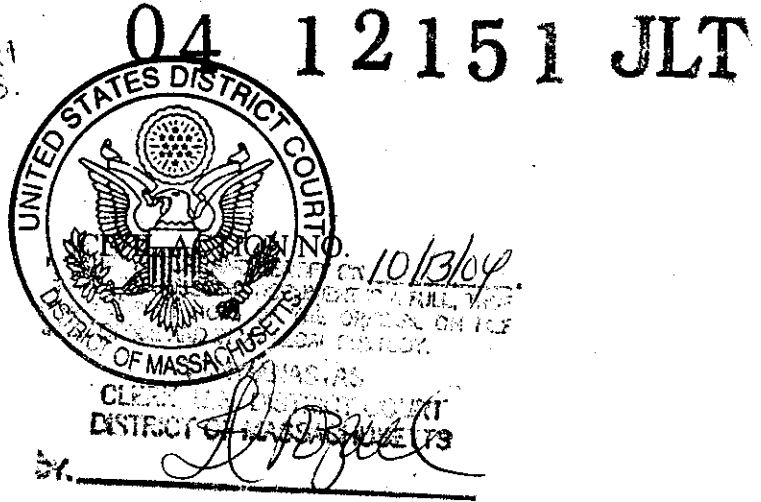
COPY

FILED
 IN CLERK'S OFFICE
 UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF MASSACHUSETTS
 2004 OCT 12 P 4 25

JANICE FLANDERS, U.S. DISTRICT COURT
 DISTRICT OF MASS.
 Plaintiff,

v.

LEVY HOME ENTERTAINMENT, INC.
 and CHAS. LEVY CIRCULATING CO.,
 Defendants.



DEFENDANTS' NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1446, Defendants Levy Home Entertainment, LLC, formerly known as Levy Home Entertainment, Inc., and Chas. Levy Circulating Co., LLC, formerly known as Chas. Levy Circulating Co. (collectively "defendants"), hereby notice the removal of the above-captioned matter from the Superior Court for Bristol, Department of the Trial Court of the Commonwealth of Massachusetts, Civil Action No. 04-00776-A. In support thereof, defendants state the following:

1. Defendant Chas. Levy Circulating Co., LLC was served with a copy of the complaint in this action on September 20, 2004.
2. Defendant Levy Home Entertainment, LLC was served with a copy of the complaint in this action on September 22, 2004.
3. True and correct copies of the complaint, summonses, civil action cover sheet, motion for appointment of special process server and clerk's notice of allowance thereof are attached hereto as Exhibit A and constitute all process, pleadings and orders served upon the defendants in this action.

4. In accordance with the requirements of 28 U.S.C. § 1446, this notice of removal is filed within thirty (30) days after defendants first received a copy of the initial pleading setting forth the claims for relief upon which plaintiff's action is based as set forth above.

5. Plaintiff Janice Flanders is an individual and resides in New Bedford, Massachusetts.

6. Defendant Levy Home Entertainment, LLC is a Delaware limited liability company with a principal place of business at 1930 George Street, Melrose Park, Illinois 60160.

7. Defendant Chas. Levy Circulating Co., LLC is a Delaware limited liability company with a principal place of business at 1930 George Street, Melrose Park, Illinois 60160.

8. Plaintiff's complaint alleges causes of action against the defendants under M.G.L. c. 151B § 4 for employment discrimination against her on the basis of age, disability and failure to accommodate, for wrongful termination, and for intentional/negligent infliction of emotional distress. In her complaint plaintiff seeks compensatory damages "for her financial and emotional damages" caused by the alleged discriminatory acts. In her statement of damages filed with the complaint, plaintiff itemizes documented medical expenses, and documented and anticipated lost wages and compensation in the amount of \$54,059.40. In addition, plaintiff describes the nature of her injury as "emotional and psychological injuries, including depression." Plaintiff also seeks attorneys' fees. Without admitting and expressly denying the validity of plaintiff's causes of action, it is clear that the amount in controversy in this action will exceed the sum of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

9. In accordance with 28 U.S.C. § 1332, there is complete diversity of citizenship between the parties, and the amount in controversy exceeds the sum of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

10. Defendants respectfully ask that this action be removed to the United States District Court for the District of Massachusetts for further proceedings, as though this action had originally been instituted in that Court.

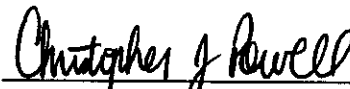
11. Pursuant to 28 U.S.C. § 1446(d), defendants will promptly file a copy of this notice of removal with the Clerk of the Superior Court, Bristol County, Commonwealth of Massachusetts, and will also serve a copy upon all counsel of record.

WHEREFORE, defendants Levy Home Entertainment, LLC and Chas. Levy Circulating Co., LLC request that the action now pending against them in the Superior Court of Bristol County, Department of the Trial Court of the Commonwealth of Massachusetts, Civil Action No. 04-00774-A, be removed to this court.

Respectfully submitted,

LEVY HOME ENTERTAINMENT, LLC,
and CHAS. LEVY CIRCULATING CO.,
LLC,

By their attorneys,



Dean Richlin (BBO #419200)
Michael L. Rosen (BBO #559954)
Christopher J. Powell (BBO #658884)
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1000

Dated: October 12, 2004

AFFIDAVIT OF SERVICE

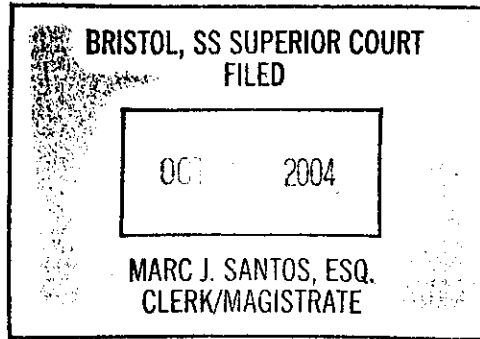
I, Paul K. C. Lee depose
and state that on this day a true
copy of the above document was
served upon the attorney of record
for each party by mail ~~by hand~~
signed under the pains and penalties
of perjury.

Dated: 10/12/04 



**FOLEY
HOAG** LLP
ATTORNEYS AT LAW

October 13, 2004



Andrea Husher Carter
Senior Paralegal
Boston Office
617.832.1761
acarter@foleyhoag.com

Via U.S. Mail

Civil Clerk's Office
Bristol Superior Court
9 Court Street, Room 13
Taunton, MA 02780

Re: Janice Flanders v. Levy Home Entertainment, Inc., et al.
Civil Action No. 04-00776-A

Dear Sir or Madam:

Please be advised that the captioned case was removed to the United States District Court for the District of Massachusetts on October 12, 2004 and has been assigned Civil Action No. 04-12151-JLT in that Court.

Enclosed please find Defendants' Notice of Filing of Notice of Removal with attached court certified copy of Defendants' Notice of Removal.

After the Notice has been docketed, please prepare certified copies of the docket and the contents of the Bristol case file. Please give me a call when the certified record is ready and I will make arrangements for payment.

Thank you for your assistance in this matter.

Very truly yours,

Andrea Husher Carter

Enclosure

cc: Goncalo M. Rego, Esq.
Dean Richlin, Esq.
Michael L. Rosen, Esq.
Christopher J. Powell, Esq.

FHBOSTON/1117552.1

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT
CIVIL ACTION
No.: BRCV2004-00776-A

JANICE FLANDERS
Plaintiff

v.

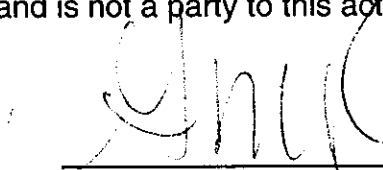
**LEVY HOME ENTERTAINMENT, INC.,
AND
CHAS. LEVY CIRCULATING COMPANY**
Defendants

MOTION FOR APPOINTMENT OF SPECIAL PROCESS SERVER

Pursuant to Massachusetts Rule of Civil Procedure 4(c), Plaintiff, Janice Flanders, respectfully moves that QUICKSERV, INC. be specially appointed for the purpose of serving all process and other papers in the above-captioned case.

Plaintiff further certifies that to the best of its knowledge and belief the person appointed process server is experienced in the service of process, is 18 years of age or over, and is not a party to this action.

Dated: 7/19/04



Plaintiff Janice Flanders,
By her attorney,
Goncalo M. Rego, Esquire
Law Offices of G. M. Rego
411 Columbia Street
Fall River, MA 02721

LAW OFFICES OF



Gonçalo M. Rego
Attorney

Juan Vazquez Navarro*
Attorney

Christopher M. Abreu
Attorney

411 Columbia St., Fall River, MA 02721
Tel. (508) 678-3400
Fax (508) 678-3535

*Also admitted in RI

July 18, 2004

ATTENTION: CLERKS OFFICE

Taunton Superior Court
9 Court Street
Taunton, MA 02780

RE: Janice Flanders v. Levy Home Entertainment, Inc., et al

CIVIL ACTION NO.: BRCV2004-00776-A

Dear Sir/Madam:

Enclosed please find two **MOTION FOR APPOINTMENT OF SPECIAL PROCESS SERVERS** on the above-mentioned case.

If you have any questions, please do not hesitate to call my office. Thank you for your anticipated cooperation.

Very truly yours,

Melissa Mare
Goncalo M. Rego, Esquire

MM
Enclosures